

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

JAN 14 2004

Appl. No. : 10/075,857 (Confirmation No. 9430)
Applicants : Kenneth Fred Bailey
Filed : February 14, 2002
Art Unit : 3652
Examiner : Raymond B. Johnson
Docket No. : 4148.4
Customer No. : 21176

Date: January 14, 2004

OFFICIAL

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

RESPONSE TO THE RESTRICTION REQUIREMENT

Sir:

This responds to the Office Action mailed December 15, 2003, in which the Examiner asks that Applicants elect one of the two inventions, namely Invention I and Invention II. According to the Examiner, Invention I includes Claims 1-41 and 47-60, drawn to a diffuser apparatus, and Invention II includes Claims 42-46 and 61-75, drawn to a method of distributing particulate material.

Applicants elect without traverse to prosecute Claims 1-41 and 47-60 (i.e., Invention I). Applicants expressly reserve the right to file a divisional application or take other measures necessary to protect non-elected Claims 42-46 and 61-75 (i.e., Invention II).

The Examiner has indicated that upon electing Invention I, Applicants should further elect for prosecution one of three species, which the Examiner describes as species A (Figures 1-5), species B (Figure 6), and species C (Figures 7-9). Applicants, however, respectfully assert that this sub-restriction is unfounded and request that the Examiner reconsider the same.

Serial No.: 10/075,857
Filed: February 14, 2002
Response of January 14, 2004
Page 2 of 3

First, please note that Figure 9 of species C is a photograph of wood chips that have been stacked using a chip diffuser according to the present invention. Applicants assert that Figure 9 has erroneously been categorized in species C and respectfully request that Figure 9 of species C be withdrawn from the sub-restriction requirement.

Second, Applicants traverse the Examiner's sub-restriction requirement with respect to species B. According to MPEP § 806.04(e-f) "claims to be restricted to different species must recite the mutually exclusive characteristics of such species." Applicants respectfully submit that species B is not mutually exclusive with species A as depicted in Figures 1-4 or with species C as depicted in Figures 7-8.

In this regard, please note that Figure 5 of species A and Figure 6 of species B depict different modes of mounting the vanes (21) onto the vane mounting rods (13). Either of these modes of mounting the vanes on the vane mounting rods can be employed in various embodiments of the claimed invention. See Paragraph 58.

For instance, the vanes illustrated in Figures 1-4 of species A can be mounted on vane mounting rods as depicted either in Figure 5 of species A or in Figure 6 of species B. Likewise, the vanes illustrated in Figures 7-8 of species C can be mounted on vane mounting rods as depicted either in Figure 5 of species A or in Figure 6 of species B. Applicants respectfully contend that species B is not mutually exclusive either with species A as shown in Figures 1-4 or with species C as shown in Figures 7-8. In view of the foregoing, Applicants request the Examiner withdraw the sub-restriction requirement with respect to species B.

Third, Applicants turn to Examiner's sub-restriction requirement with respect to species C. Applicants note that Figures 1-6 depict non-curved toe bars (25) and Figures 7-8 depict curved toe bars (25). It appears to Applicants that the Examiner is indicating that species A and species C have mutually exclusive toe bar designs. For that reason, Applicants hereby elect to traverse to prosecute species C, which depicts curved toe bars. Applicants believe that pending Claims 1-41 and 47-60 appear to be pertinent to the elected species C.

Serial No.: 10/075,857
Filed: February 14, 2002
Response of January 14, 2004
Page 3 of 3

That said, Applicants traverse the sub-restriction requirement. Applicants contend that the combined examination of claims directed to a chip diffuser having curved toe bars and a chip diffuser having non-curved toe bars will not be unduly burdensome. *See* MPEP § 803 ("There must be a serious burden on the examiner if restriction is required."). In this regard, MPEP § 808.02 states "[w]here, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." In view of the foregoing, Applicants respectfully request that the Examiner withdraw the sub-restriction requirement.

If Applicants have misinterpreted the Examiner's intentions with respect to the sub-restriction requirement, please contact the undersigned attorney at (704) 945-6702.

Respectfully submitted,



Richard Additon
Registration No. 43,460

021176
Summa & Allan, P.A.
11610 North Community House Road
Suite 200
Charlotte, NC 28277-2162
Telephone: 704-945-6700
Facsimile: 704-945-6735
SA\FIRM DOCS\4148\4P\Election011404.doc

**SUMMA &
ALLAN, P.A.**
PATENT ATTORNEYS

**RECEIVED
CENTRAL FAX CENTER**

JAN 14 2004

OFFICIAL

11610 NORTH COMMUNITY HOUSE RD
SUITE 200
BALLANTYNE CORPORATE PARK
CHARLOTTE, NC 28277
T: 704.945.6700
F: 704.945.6735
W: WWW.PATSUMMA.COM

FACSIMILE TRANSMITTAL SHEET

TO:	Examiner: Raymond B. Johnson Art Unit 3652	FROM:	Richard Additon
COMPANY:	USPTO	DATE:	1/14/2004
FAX NUMBER:	703-872-9306	TOTAL NO. OF PAGES INCLUDING COVER:	5
PHONE NUMBER:	703-308-2565	SENDER'S REFERENCE NUMBER:	4148.4
REF:	Ser. No.: 10/075,857 Filed: February 14, 2002 Confirmation No.: 9430	YOUR REFERENCE NUMBER:	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please find attached a Response to the Restriction Requirement in the above-referenced patent application.

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential. It is intended only for the use of the above-named individual or entity. If you are the reader of this message and are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by phone and return the original message to us at the address above via the United States Postal Service. Thank you.

S:\FIRM DOCS\FORMS\2002\FAXCOVER.DOC

PTO/CB/97 (08-03)

Approved for use through 07/31/2008, OMB 0551-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office Fax No. 703-872-9306

on January 14, 2004

Date



Signature

Vinisha Joshi

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

This certificate of transmission is for the Response to Restriction Requirement being submitted in the Patent Application Ser. No. 10/075,857, filed February 14, 2002

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.